IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

WA.No. 1043 of 2004()

AGAINST THE JUDGEMENT IN WPC.10650/2004 Dated 30/03/2004
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APPELLANT: 2ND RESPONDENT:

JAYAKUMAR PAI, G.C.D.A. COLONY,
VADUTHALA, KOCHI-21.

BY ADV. SRI.K.ANAND

RESPONDENTS: PETITIONER & RESPONDENT:
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1. VASUDEVA PAI, S/O. LATE VAMANA PAI,
40/7010 SRINIVASA MALLAN ROAD,
ERNAKULAM.

2. THE ASSISTANT ENGINEER,
KERALA STATE ELECTRICITY BOARD,
ELECTRICAL SECTION CENTRAL,
ERNAKULAM.

R1 BY ADV. SRI.P.SATHISAN
R2 BY SRI.N.N.SUGUNAPALAN, SC, KSEB

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 04/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A.No.1043 of 2004

Dated, this the 4th day of June, 2007

JUDGMENT

H.L.Dattu, C.J.

This writ appeal is filed against the orders passed by the learned Single Judge in W.P.(C) No.10650 of 2004 dated 30th March, 2004. By the impugned order the learned Single Judge has directed the first respondent in the writ petition to give electricity connection to the residential portion of the building occupied by the petitioner after collecting adequate security from him.

2. The second respondent in the writ petition being aggrieved by the aforesaid order passed by the learned Single Judge is before us in this appeal.

3. Learned counsel appearing for the appellant would submit that though the petitioner had arrayed the second respondent in the writ petition, the learned Single Judge without issuing any notice to the second respondent has passed an exparte order. It is further contended that the observations made by the learned Single Judge in the course of the order would affect his defence in the suit that is pending between the petitioner and the second respondent. Therefore he requests us to interfere with the orders passed by the learned Single Judge.

4. Learned counsel appearing for the petitioner in the writ petition would submit that since the learned Single Judge was issuing a direction only to the Board, the necessity of issuing any notice to the second respondent did not arise at the time of disposal of the writ petition. Therefore, he states that the appellant is in no way affected by the orders passed by the learned Single Judge.

5. The learned counsel for the appellant would submit that there is a dispute with regard to the property in possession of the petitioner before the civil court. It is also stated that the appellant before us is the defendant in the

suit and he has disputed the ownership/occupation of the part of the building by the petitioner.

6. The learned Single Judge while disposing of the writ petition in so many places has observed that the petitioner is in occupation of part of the building for his residence. This observation of the learned Single Judge may affect the defence of the appellant in the suit that is pending between the parties before the civil court. Therefore, in our opinion, if liberty is granted to the learned counsel for the appellant to make an appropriate application/review petition, interest of justice would be met to both the parties.

Therefore, without going into the merits of the writ appeal, the same is disposed of. Liberty is reserved to the appellant/second respondent in the writ petition to make an appropriate application/review petition before the learned Single Judge, if he so desires, within 15 days time from today. If such a review petition is filed we request the learned Single Judge to consider the same in accordance with law. All contentions of both the parties are left open. Till a decision is taken by the learned Single Judge on the review petition that may be filed by the appellant, the Board is directed not to disconnect supply of electrical energy to the petitioner's residential premises except for non-payment of energy charges. Ordered accordingly.

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(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

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